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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/553,210	10/13/2005	Herbert Wirz	2360-0429PUS1	1244

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EXAMINER	
KEENAN, JAMES W	

ART UNIT	PAPER NUMBER
3652	

NOTIFICATION DATE	DELIVERY MODE
01/14/2009	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mailroom@bskb.com

Office Action Summary	Application No.	Applicant(s)	
	10/553,210	WIRZ ET AL.	
	Examiner	Art Unit	
	James Keenan	3652	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *21 October 2008*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-16 and 18-23* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-16 and 18-23* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *21 October 2008* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 10-16 and 18-23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 10, line 2, the term "preferably" is vague.

Claim 12, it is not clear if the recitation of "a collecting device" refers to the collecting device previously set forth in claim 1.

Claim 13, line 9, "and" should apparently be deleted;

and line 13, --whereas-- should apparently be "and".

Claim 16, line 3, "is moved" should be deleted;

and penultimate line, "is filled" should be deleted.

Claims 18, 19, 22, and 23, it is not clear to what clause the phrase "or tilting" refers.

Claim 21, line 1, "in" should apparently be deleted.

Claim 22, line 2, --against-- should apparently be inserted after "objects".

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 13 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Peltomaki et al (EP 767113, previously cited).

Peltomaki shows a warehouse arrangement comprising a collecting device 20 movable over a storage area 3 by a robot 12, intermediate store 21 arranged on the collecting device for accommodating objects successively picked from the storage area in stacks or partial stacks in separate pick-up steps, and a gripping device 25, 26 arranged on the collecting device for lifting stacks or partial stacks, the gripping device being vertically movable and formed by "mutually opposite blades", as broadly claimed. Outgoing conveyor 14 is considered to be "a storage unit which can be moved independently", as broadly claimed, and to which objects in the intermediate store are directly transferred (col. 4, lines 6-11 and 50-52).

Re claim 21, the apparatus can clearly perform the method steps recited, inasmuch as they simply mirror the limitations of apparatus claim 13.

Applicant argues that the conveyor does not move independently of the collecting device and that the gripping device is not vertically movable relative to the intermediate store. However, claims 13 and 21 do not recite *means for moving* the conveyor nor do they require the gripping device to be moved relative to the intermediate store. Peltomaki shows a conveyor which "**can be moved** independently" (claim 13, emphasis added) and "is independently **movable**" (claim 21, emphasis added), as broadly claimed, relative to the collecting device. Similarly, Peltomaki shows the gripping device to be "vertically movable", as broadly claimed, even though it may not do so relative to the intermediate store.

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Peltomaki in view of Beutler et al (US 6,379,096, previously cited).

Peltomaki does not show the storage unit to comprise a vertical base part and two forwardly projecting holding parts between which objects can be picked up by the collecting device.

Beutler shows a storage unit 16b constructed in such a manner, as clearly seen in figs. 4-5, and which is independently movable relative to a gripping unit 40 which transfers articles directly to the storage unit.

It would have been obvious for one of ordinary skill in the art at the time of the invention to have modified the apparatus of Peltomaki by constructing the storage unit with a vertical base part and two forwardly projecting holding parts between which objects can be picked up by the collecting device, as shown by Beutler, as this would allow greater flexibility and access to the storage unit.

7. Claims 15/13 and 15/14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Peltomaki in view of Beutler et al, as applied to claim 14 above, and further in view of Eisele (DE 2629718, previously cited).

Peltomaki as modified does not show the storage unit arranged on a separate portal bridge from the collecting device.

Eisele shows collecting device 8 and storage units 9 arranged on separate portal bridges and between which picked-up articles can be directly transferred.

It would have been obvious for one of ordinary skill in the art at the time of the invention to have further modified the apparatus of Peltomaki by utilizing storage units on a separate portal bridge, as shown by Eisele, to provide greater storage flexibility.

8. Claims 1, 3/1-5/1, 6-8, 10-12, 16, 19, and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Peltomaki in view of Ellington (US 5,599,157, previously of record).

Peltomaki does not teach the newly recited limitation of the blades of the gripping device to be vertically movable "with respect to the intermediate store".

Ellington teaches a device for picking up objects 12 with a stacking (collecting) device 20, the device being movable over an object to be picked up, the device including an intermediate store 65 to accommodate a stack 22 of articles which can be picked up by a gripping device 66 in separate pick-up steps, wherein the gripping device is formed of opposed blades and is vertically movable relative to the intermediate store (see col. 5, line 26 to col. 6, line 33).

It would have been obvious for one of ordinary skill in the art at the time of the invention to have modified the apparatus of Peltomaki by utilizing blades of a gripping

device which move vertically relative to the intermediate store, as taught by Ellington, to more effectively and efficiently pick-up a plurality of articles to be stacked in the store.

This also applies to corresponding method claim 16.

Re claim 3, the intermediate stores of Peltomaki and Ellington are formed by "mutually opposite side beams".

Re claim 4, the blades of the gripping devices of Peltomaki and Ellington are mounted in the side beams of the intermediate store.

Re claim 5, the vertical planes of the blades and side beams of Peltomaki and Ellington enclose a space with a rectangular cross section.

Re claims 6, 19, and 22, note in Peltomaki "holding elements" on the lower edges of the blades (fig. 3), as well as similar structure in Ellington.

Re claim 7, the intermediate stores of Peltomaki and Ellington are arranged in a fixed location, at least horizontally (Peltomaki) or vertically (Ellington) above the storage area, as the objects are picked up.

Re claim 8, Peltomaki as modified does not show a vertically movable element at the upper end of the intermediate store to exert a downward force on the topmost object to stabilize the stack. However, the examiner takes Official Notice that it is generally well known in the stacking art to utilize a vertically movable device to exert a force on the topmost object in a stack to stabilize the stack, and in view thereof, it would have been obvious for one of ordinary skill in the art at the time of the invention to have modified the apparatus of Peltomaki with such a device as an obvious design expediency.

Re claim 10, note in Peltomaki "calibration parts" 23, 24, as broadly claimed.

Re claim 11, although Peltomaki's calibration parts are not C-shaped, the particular shape is considered to be a design choice well within the level of ordinary skill in the art.

Re claim 12, absent any structural limitations, nothing precludes any two or more portions of the collecting device from being considered "a plurality of intermediate stores".

9. Claims 2, 3/2-5/2, 9, 18, 20, and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Peltomaki in view of Ellington, as applied to claims 1 and 16 above, and further in view of Blakeley (US 2,735,713, previously cited).

Peltomaki as modified does not show the collecting device to comprise mutually opposite halves movable relative to each other.

Blakeley shows a device for collecting a plurality of stacked objects comprised of two mutually opposite halves B and C which are moved relative to each other to collect the objects therebetween.

It would have been obvious for one of ordinary skill in the art at the time of the invention to have further modified the apparatus of Peltomaki by constructing the collecting device with relatively movable, mutually opposite halves, as shown by Blakeley, as this would simply be an alternate equivalent, art recognized means of collecting vertically stacked articles, the use of which in the apparatus of Peltomaki would require no undue experimentation and produce no unexpected results.

This also applies to corresponding method claim 20.

Re claims 9, 18, and 23, note securing/holding elements 20 of Blakeley.

10. Applicant's arguments filed 10/21/08 with respect to claims 13-15 and 21 have been fully considered but they are not persuasive. These arguments have been addressed above.

11. Applicant's arguments with respect to claims 1-12, 16, 18-20, 22, and 23 have been considered but are moot in view of the new ground(s) of rejection.

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to James Keenan whose telephone number is 571-272-6925. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Saul Rodriguez can be reached on 571-272-7097. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/James Keenan/
Primary Examiner
Art Unit 3652

jwk
1/08/09